IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11980 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURBHI INDUSTRIES LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 11980 of 2002
MR MIHIR H JOSHI for Petitioner No. 1
MR DN PATEL for Respondent No. 1-3

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 27/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

RULE. Service of rule is waived by learned Senior Central Government Standing Counsel Shri D.N. Patel for the respondents.

2. The petitioner has challenged the validity of order dated 5th August, 2002 passed by the CEGAT.

3. Learned advocate Shri Mihir Joshi appearing for the petitioner has submitted that the said order passed by the CEGAT is unjust, improper and illegal because while passing the impugned order the CEGAT had ignored its view expressed in the case of WHATTS ELECTRONICS PVT. LTD. Vs. COLLECTOR OF CENTRAL EXCISE, KOCHI reported in 1992(48) ECR 286(Tribunal). It has been also submitted by him that the view expressed in WHATTS ELECTRONICS PVT. LTD. Vs. COLLECTOR OF CENTRAL EXCISE was followed by the Tribunal in the case of SHREE CABLES & CONDUCTORS LTD Vs. COMMISSIONER reported in 2001 (135) E.L.T. 1110. It has been thereafter submitted by him that the view expressed by the Tribunal in the case of SHREE CABLES & CONDUCTORS LTD. Vs. COMMISSIONER has been confirmed by the Hon'ble Supreme Court as Civil Appeal No. D15220 of 1999 filed by the Commissioner of Central Excise, Bhopal against the said order was dismissed by the Hon'ble Supreme Court on 19.11.1999.

4. It has been thereafter submitted by learned advocate Shri Mihir Joshi that the Tribunal had considered its view expressed in the case of COMMISSIONER OF CENTRAL EXCISE, SURAT Vs DHANLAXMI TEXTURISERS AND 21 ORS dated 18th May, 2002 while passing the impugned order and in view of the fact that the said case had been disposed of against the assessee, the Tribunal had finally decided the Appeals against the assessee. It has been submitted by the learned advocate that the order passed by the Tribunal in the case of COMMISSIONER OF CENTRAL EXCISE, SURAT Vs. DHANLAXMI TEXTURISERS AND 21 ORS has been quashed by this Court as the view expressed in the said case by the Tribunal was contrary to the view expressed by the Hon'ble Supreme Court. It has been therefore submitted that the impugned order should be quashed and set aside.

5. In pursuance of notice issued by this Court, learned Senior Central Government Standing Counsel Shri D.N. Patel has appeared for the respondent authorities. Looking to the fact that the earlier view expressed by the Tribunal in the case of SHREE CABLES & CONDUCTORS

LTD. Vs. COMMISSIONER has been now confirmed by the Hon'ble Supreme Court by dismissing an appeal filed against the said order, he had to reluctantly agree to the fact that the impugned order passed by the Tribunal cannot be justified.

6. It is pertinent to note that the order passed by the Tribunal in the case of COMMISSIONER OF CENTRAL EXCISE, SURAT Vs. DHANLAXMI TEXTURISERS AND 21 ORS was challenged in Special Civil Application No. 10759/2002. The said petition has been allowed by this Court today. While passing the impugned order, the Tribunal had followed its view expressed in the case of COMMISSIONER OF CENTRAL EXCISE, SURAT Vs. DHANLAXMI TEXTURISERS AND 21 ORS. In view of the fact that the decision rendered by the Tribunal has been now set aside, in our opinion, the impugned order following the said order also deserves to be quashed and set aside. Moreover, it is also not in dispute that the Tribunal was in error in taking a different view than the one which it had taken in the case of WHATTS EXLECTRONICS PVT. LTD. Vs. COLLECTOR OF CENTRAL EXCISE and in the case of SHREE CABLES & CONDUCTORS LTD. Vs. COMMISSIONER.

7. Looking to the above fact, in our opinion, the order passed by the Tribunal cannot be sustained and, therefore, in view of the above referred undisputed facts, we quash and set aside the order passed by the Tribunal so that the order passed the Commissioner of Appeals(Surat) can operate.

Rule is made absolute with no order as to costs.

(A.R DAVE,J.)

(K.M. MEHTA,J.)

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